

Even the Washington Post, not exactly a conservative media outlet, caught Ms. Gupta's flip-flop, correctly characterizing her June 16, 2020, testimony as "exactly what 'defunding the police' is all about. Now Gupta says she has never supported the idea."

Now, does President Biden really think it is a good idea to put radical ideologues who have publicly espoused support for defunding the police in charge of the Department of Justice?

Well, perhaps he does, as evidenced by his nominations of Vanita Gupta and Kristen Clarke for top roles.

I am concerned about Ms. Gupta's apparent disregard for Americans who hold views dissimilar from her own. In 2018, she tweeted that Senator SUSAN COLLINS had failed her constituents based on her support for Justice Brett Kavanaugh and was "sending a dangerous message" to survivors of sexual assault.

While Ms. Gupta repeatedly asked Senators for forgiveness for her many inappropriate tweets and asked for a second chance, it is significant here that she didn't give that second chance to others when the shoe was on the other foot.

For example, when Ryan Bounds was nominated to the U.S. Court of Appeals for the Ninth Circuit, Ms. Gupta said the following about some comments he had made when he was in college:

While he has recently apologized for those comments, the timing of that apology suggests it is one of convenience rather than remorse, offered in a last-ditch effort to salvage his nomination and win the support of his home-state senators.

It appears here that Ms. Gupta perhaps wants to provide no grace, no second chance to others for things they wrote in college but then has asked for Senators to give her grace and a second chance for insensitive statements from only a few years ago or, in some cases, only a few months ago.

If past practices are any indication, I am concerned that she might begin to wield the Department of Justice as a weapon of sorts against anyone and anything holding different views from her own and that she may do so aggressively by conducting as many expensive, hostile pattern-and-practice investigations against State and local law enforcement as she can, whether they are warranted or not, if, in her view, they somehow deserve it or they somehow disagree with her. Based on her past use of pattern-and-practice investigations while she was running the Department of Justice's Civil Rights Division, I worry that she might subject State and local law enforcement jurisdictions to lengthy and expensive review requirements, forcing them to buckle under her policy preferences and sending warning messages to other jurisdictions.

I am concerned that she might inappropriately rely on the outside activist groups for which she has lobbied to formulate policy and practices for the Department of Justice and State and

local law enforcement agencies. I am concerned, too, that she will use third-party settlement agreements to reward the activist groups for which she has lobbied at the expense of others.

Now, advocates of Ms. Gupta claim frequently that she is a consensus builder. I don't doubt that. In fact, I would note here that Ms. Gupta and I have worked on the same side of issues that I care deeply about, and I note here that I find her to be a delightful person and a remarkably gifted mind and lawyer. She is very talented, and she is someone who seems to be a genuinely nice person in many, many ways. But if we are going to talk about consensus building, I think a fair test to evaluate whether someone is a consensus builder might involve looking at how they treat those with whom they disagree. Unfortunately, Ms. Gupta's public statements don't necessarily result in flying colors on that test. Again, the issue here is not whether she agrees with those who disagree with her. We have already established that she disagrees with those who hold different views than her own. The question is, How does she treat them?

Here is what Ms. Gupta said about Judge Sarah Pitlyk:

Sarah Pitlyk is unqualified and unfit for a lifetime position on our federal courts. . . . She has defended the most extreme, anti-abortion laws our Nation has seen to date.

This is what she said about Judge Lee Rudofsky:

Rudofsky . . . has challenged the constitutionality of reproductive rights under the Fourteenth Amendment and has effectively asked the Supreme Court to overturn *Roe v. Wade* and *Casey v. Planned Parenthood*. . . . Rudofsky is unfit and would bring a clear bias to the bench.

In a 2017 blog post, Ms. Gupta advocated for forcing Colorado baker, Jack Phillips, to create a custom-designed cake celebrating a same-sex wedding even though it would violate his religious beliefs. She said:

Religious liberty is not a talisman that confers absolute immunity from any personal constraints at all: At times, the free exercise of religion yields to other foundational values, including freedom from harm and [freedom from] discrimination.

Now, fortunately, in this instance, Supreme Court Justices—seven of the nine Supreme Court Justices, in fact—disagreed with her position in the *Mastertiece Cakeshop* case.

Now, she has reiterated this sentiment time and time again. In 2017, she tweeted: "Yes, freedom of religion is a fundamental right, but it is not an absolute right."

After the Supreme Court ruled in favor of the conscience rights of the Little Sisters' of the Poor, she called the decision "troubling" and "discrimination sanctioned by the Court," writing that "this type of discrimination will potentially inflict harm on hundreds of thousands of people and disproportionately impact women of color and people in lower-income groups."

Now, let me be very clear on this issue. Let me be very clear about what

she was talking about. Ms. Gupta in that statement was indicating that she thought the government should force a convent of nuns who have taken vows of celibacy to provide birth control against their religious convictions.

That is troubling, and that is not consistent with our understanding of the free exercise of religion. Look, no one would argue that any one constitutional right is absolute, in that no other consideration can ever come into play. No one would argue that a generally applicable religiously neutral law can have no application ever where it conflicts in some way with an assertion of religious freedom. We are not talking here about whether it is absolute or not. But her own application of that would be deeply troubling I think to most Americans.

What also concerns me is whether, with the force of the U.S. Department of Justice behind her, whether she is capable of respecting the constraints of the law, of the Constitution, and of federalism.

In her efforts to push her policy preferences and reward those with whom she disagrees, I am very concerned that she might stretch the boundaries of her authority much further than it was ever intended to go.

Ms. Gupta has exhibited on Twitter and elsewhere that she is someone who holds very strident political views, views that many would regard as very radical, and I feel neither confident nor comfortable that she will respect those with views contrary to her own.

On that basis, I urge my fellow Senators to vote against Ms. Gupta and this illegitimate motion to discharge. I urge President Biden to send us nominees who will achieve his stated goal of unifying our country and not dividing it.

I yield the floor.

The PRESIDING OFFICER (Mr. VAN HOLLEN). The Senator from Illinois is recognized.

#### MOTION TO DISCHARGE

Mr. DURBIN. Mr. President, my friend and colleague from Utah is not the first to come to the floor on the Republican side and raise questions about committee procedure that led to Vanita Gupta being considered today before the U.S. Senate.

They say it is unheard of, unthinkable, unimaginable, unfathomable that the Senate committee rules were not carefully followed and that their attempt at a filibuster was in some way diverted.

I would ask unanimous consent to have printed into the RECORD a memo entitled "Senate Judiciary Committee Rule Violations by [Senate Judiciary Committee] Chairs Graham, Grassley, and Hatch."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE JUDICIARY COMMITTEE RULE VIOLATIONS BY CHAIRS GRAHAM, GRASSLEY, AND HATCH

CHAIRMAN GRAHAM RULE VIOLATIONS  
Graham (116th Cong.)

a. Violation: Rule III  
 i. Date: July 25, 2019  
 ii. Summary: Chairman Graham's Secure and Protect Act was on the agenda. Then-Ranking Member Feinstein was the only Democrat in attendance. Graham stated that he would deem the bill held over at the following week's markup. This constituted "conducting business" under the Committee's rules, despite the lack of a quorum.

iii. Source: <https://www.judiciary.senate.gov/meetings/07/25/2019/executive-business-meeting>

2. Graham (116th Cong.)  
 a. Violation: Rule I; Rule IV; Rule V

i. Date: August 1, 2019  
 ii. Summary: At an August 1, 2019, markup, Chairman Graham forced a vote on his Secure and Protect Act despite a request to hold over the bill. Graham ignored Democratic requests to hold the bill over; called a vote—setting a time certain for final passage of the bill—without first allowing any Democratic members to speak; and did not allow any amendments to be offered.

iii. Source: <https://www.judiciary.senate.gov/meetings/08/01/2019/executive-business-meeting>

3. Graham (116th Cong.)  
 a. Violation: Rule III; Rule IV

i. Date: October 15, 2020  
 ii. Summary: Chairman Graham held a markup during which Committee Republicans held over Amy Coney Barrett's nomination to the Supreme Court. Chairman Graham also called a vote to vote on Barrett's nomination at a time certain the following week. However, Barrett's hearing had not yet concluded by this point—the witness panels were held in the afternoon on October 15, 2020, after the markup vote. Committee Democrats objected to holding this markup before the hearing concluded, and Senator Durbin—the only Democrat in attendance—moved to adjourn the markup. Graham overrode Durbin's motion on a roll call vote in violation of the Committee's quorum rule.

iii. Source: <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-amy-coney-barrett-to-be-an-associate-justice-of-the-supreme-court-of-the-united-states-day-4>

Durbin Comments: [https://twitter.com/SenatorDurbin/status/1316751184468865025?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etwterm%5E1316751184468865025%7Ctwgr%5E%7Ctwcon%5E%1&ref\\_url=https%3A%2F%2Fwww.commondreams.org%2Fnews%2F2020%2F10%2F15%2Funprecedented-lindsey-graham-openly-violates-committee-rules-schedule-vote-barrett](https://twitter.com/SenatorDurbin/status/1316751184468865025?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwterm%5E1316751184468865025%7Ctwgr%5E%7Ctwcon%5E%1&ref_url=https%3A%2F%2Fwww.commondreams.org%2Fnews%2F2020%2F10%2F15%2Funprecedented-lindsey-graham-openly-violates-committee-rules-schedule-vote-barrett)

4. Graham (116th Cong.)

a. Violation: Rule III

i. Date: October 22, 2020

ii. Summary: Chairman Graham broke the Committee's business quorum rule, which states that nine Members of the Committee, including at least two Members of the minority, must be present to transact business. No Committee Democrats attended this markup, at which Amy Coney Barrett's nomination was voted out of Committee. Chairman Graham ignored this rule, and Committee Republicans voted 12-0 to advance Barrett along with the other nominees on the agenda that day.

iii. Source: <https://www.judiciary.senate.gov/meetings/10/22/2020/executive-business-meeting>

#### CHAIRMAN GRASSLEY RULE VIOLATIONS

1. Grassley (115th Cong.)

a. Violation: Rule IV

i. Date: September 13, 2018

ii. Summary: Then-Chairman Grassley violated Rule IV by passing a motion to cut off

debate on Brett Kavanaugh's nomination without an affirmative vote from one member of the minority. At this markup, the Judiciary Committee held over Brett Kavanaugh's nomination. Numerous other items were on the agenda that day, most notably a motion from then-Chairman Grassley to set a precise time at which the committee would vote on Kavanaugh's nomination the following week. Senators Leahy and Durbin argued that Grassley's motion violated Rule IV by cutting off debate without the consent of any member of the minority. Senator Durbin read Rule IV aloud and then summarized: "The point is, you need 11 votes and one member of the minority to stop debate on any matter, let alone a nomination to the Supreme Court." Grassley responded, "The answer to your question is no we don't, and we've checked with the Senate Parliamentarian." Grassley asserted that Chairman Hatch had done the same thing in 2003, setting a precedent that he was following.

Other items on the agenda that day included: six motions to subpoena various documents related to Kavanaugh's record; 21 lower court judicial nominees; a nominee to be a U.S. Attorney; a nominee to be a U.S. Marshal; a nominee to be Director of National Drug Control Policy; and five legislative bills.

iii. Source: Video of the markup, from approximately minute marker 00:44:48 to 00:48:15: <https://www.judiciary.senate.gov/meetings/09/13/2018/executive-business-meeting>

#### CHAIRMAN HATCH RULE VIOLATIONS

1. Hatch (108th Cong.)

a. Violation: Rule IV

i. Date: February 27, 2003

ii. Summary: At a markup, Chairman Hatch ignored Rule IV by cutting short Committee debate on the nominations of John Roberts (D.C. Cir.) and Deborah Cook (6th Cir.). Pursuant to Rule IV, then-Ranking Member Leahy asked for a vote before Hatch ended debate, but Hatch refused, directing the clerk to call the roll and noting that "[t]he Chairman's prerogative is to determine that we can go ahead to a vote" and that Rule IV "does not apply to executive nominations."

iii. February 27, 2003 Executive Business Meeting Record, on file with the Senate Judiciary Committee Library

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

#### NOMINATION OF VANITA GUPTA

Ms. KLOBUCHAR. Mr. President, I thank Senator DURBIN for his leadership, and following my colleague and friend, Senator LEE, I disagree with him vehemently about Vanita Gupta. She is someone I have worked closely with for years on voting rights, on police reform, and just last year I marched with her across the Edmund Pettus Bridge with the late John Lewis to mark the 55th anniversary of Bloody Sunday in Selma, AL.

After working alongside her to build a more just system, I have no doubt that she will take this job on with two words, two words that I think are so important right now to build trust with the people of this country: honor and integrity. That is what has marked her career.

As a civil rights lawyer, public servant, and as President of the Leadership Conference on Civil and Human Rights, the Nation's oldest, largest, and most diverse civil and human rights coalition,

she has a record of fighting for all Americans, with dedication, consistency, and—and—a willingness to work across ideological lines to achieve results.

Why did she get those police endorsements and the kind of support that she got, even though she was taking on reform? It is because she earned people's respect. She is the right person for the right time in the Justice Department, and I say this coming from Minnesota, where my State is reeling after the killing of Duante Wright.

Our hearts break for Daunte's family and for our community, which is still in the midst of the George Floyd murder trial of Derek Chauvin. I was so proud and am so proud of the ordinary citizens that came forward and testified from my State; a clerk in the store, a man walking by, all of them having carried the burden—the burden—of this murder, looking inside themselves thinking: What could I have done better?

And that case will soon conclude, but those citizens coming forward and actually the law enforcement coming forward and testifying at all levels of law enforcement for the prosecution of Derek Chauvin—that meant something to the people of my State. I want to be able to go back and tell those citizens who testified that you don't carry this burden alone; that we have a Justice Department that is going to stand up for you.

And, for me, one of those key people is Vanita Gupta. She is exactly who we need right now to champion the cause of equal justice under the law.

She has described the Department as an institution she loves dearly because, as she said, it bears the name of a value—justice—one that carries a unique charge and North Star. It is the sacred keeper of the promise of equal justice under the law, and coming from the North Star State, that means a lot.

Her commitment to defending the Constitution and upholding the integrity of this important Agency is, for her, a professional calling. It is also a personal calling. As she has described, she inherited from her parents, who came to this country, a belief in the promise of America, one that carries with it a personal responsibility to make this country better for everyone.

We all know immigrants who think like that every day—people who have just arrived and people who have raised their families here. They are Vanita Gupta. There is no question that Ms. Gupta has the experience for this job.

As an attorney for the NAACP Legal Defense and Educational Fund, she worked on the frontlines, fighting in court to protect the civil rights of some of the most vulnerable people. Later, at the American Civil Liberties Union, she brought cases on behalf of immigrant children and worked to end mass incarceration while keeping communities safe.